

Supplemental Letter of Findings: 04-20180003 & 04-20180004
Sales/Use Tax
For The Tax Years 2012, 2013, and, 2014

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Indiana Car Dealership provided additional verifiable documentation to demonstrate that it was not responsible for additional sales tax on a vehicle, which was physically delivered by its agent to the out-of-state purchaser.

ISSUE

I. Sales Tax - Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-24; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-2.5-13-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); Sales Tax Information Bulletin 28S (April 2012); Letter of Findings 04-20160349 (June 16, 2017); Letter of Findings 04-20160500 (July 18, 2017).

Taxpayer protests the assessment of sales tax, claiming that its car sales to the out-of-state customers were exempt from Indiana sales tax.

STATEMENT OF FACTS

Taxpayer is a licensed Indiana car dealership in the business of selling new and used vehicles. Taxpayer has two business locations in Indiana, and its customers include individuals and companies from states other than Indiana. Taxpayer occasionally delivers vehicles to its customers.

In 2015, the Indiana Department of Revenue ("Department") audited Taxpayer's business records and tax returns for the tax years 2012, 2013, and 2014. Both Taxpayer and the Department agreed to utilize statistical sampling methods to project the audit results for Indiana sales and use tax purposes.

Pursuant to the audit, the Department determined that Taxpayer sold several vehicles to customers who reside in Indiana or other states, but failed to collect sales tax or exemption certificates on the transactions which were subject to Indiana sales tax. The audit also found that Taxpayer was responsible for sales tax on some taxable optional products which it sold to its customers without collecting sales tax. In addition, the audit determined that Taxpayer purchased various items of tangible personal property to be used for its business without paying sales tax or self-assessing and remitting the use tax. The audit assessed Taxpayer additional sales tax, use tax, penalty, and interest accordingly. Taxpayer timely protested the assessments. A hearing was held. Letter of Findings 04-20160349 (June 16, 2017), 20170830 Ind. Reg. 045170372NRA, and Letter of Findings 04-20160500 (July 18, 2017), 20170927 Ind. Reg. 045170420NRA (collectively, "LOF"), sustained Taxpayer's protest, in part, and denied it, in part.

Taxpayer disagreed with the LOF and submitted additional documentation to support its rehearing request. The Department reviewed the supporting documents and, in turn, granted a rehearing on one issue. A rehearing was conducted based on the additional documents submitted by Taxpayer. The Supplemental Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales Tax - Imposition.

DISCUSSION

The Department's audit assessed additional sales tax because, during the tax years at issue, Taxpayer - at its two Indiana business locations - sold vehicles to various customers, invoiced to out-of-state addresses, without collecting the Indiana sales tax, exemption certificates, or properly documenting it physically delivered the vehicles to the out-of-state locations. The LOF denied Taxpayer's protest, concluding that Taxpayer's documentation failed to demonstrate that its employees or agents physically delivered the vehicles on behalf of Taxpayer and these sales were exempt from Indiana sales tax.

Taxpayer disagreed and requested a rehearing, claiming that it was not responsible for the sales tax on these vehicles. Taxpayer asserted that it was not responsible for the Indiana sales tax on the vehicles sold to its out-of-state customers on the ground that the sales were not Indiana sales under IC § 6-2.5-2-1 or the sales were exempt from Indiana sales tax under IC § 6-2.5-5-24(b).

In this instance, Taxpayer conducted its business in Indiana and does not have any business locations outside of Indiana. Additionally, Taxpayer did not have a separate line of business in transporting vehicles or goods of others. Taxpayer's documents demonstrated that its invoices did not have specific "shipped to" or "delivered to" addresses as well as particular instructions on delivery for the customers to fill in when they purchased the vehicles. When the date of the purchasers' signatures and the "date of delivery" in the invoices were the same without the above-mentioned information, Taxpayer's sales (i.e., the retail transactions) presumably occurred and concluded in Indiana pursuant to IC § 6-2.5-13-1(d)(1). In other words, Taxpayer's sales were Indiana sales subject to Indiana sales tax. The rehearing thus was granted to address the issue of whether the vehicles sold to out-of-state purchasers were exempt from Indiana sales tax because Taxpayer, through its employees or its agents, physically delivered the vehicles to the out-of-state customers' locations. As such, this Supplemental Letter of Findings references and also incorporates all relevant statutes, regulations, facts, and the audit findings discussed in the LOF and address Taxpayer's protest as follows.

As explained in the LOF, Taxpayer is required to demonstrate that the assessment is incorrect. IC § 6-8.1-5-1(c). Also, Indiana mandates that every person who is subject to a listed Indiana tax must keep books and records, including all source documents, "so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). Thus, Taxpayer is required to provide verifiable documents to explain and support its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopolite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010).

Also, as the LOF explained, a purchaser who acquires tangible person property in a retail transaction is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.* "The retail merchant shall collect the tax as agent for the state." *Id.* When a purchaser claims the purchase "is exempt from the state gross retail [] tax[], the purchaser may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). The "seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail [] tax on that purchase." *Id.* Otherwise, as an agent for the State of Indiana, the seller "holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3.

During the rehearing, relying on its additional documentation, Taxpayer continued to argue that it was not responsible for additional sales tax on the vehicles it sold to out-of-state customers because it delivered the vehicles to customers out-of-state. In other words, Taxpayer argued that its sales of vehicles to out-of-state customers were not subject to Indiana sales tax because they qualified for the "interstate commerce" exemption. As the LOF noted, a statute which provides a tax exemption is strictly construed against the taxpayer. *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). In applying any tax exemption, "[t]he general rule is that tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

The "interstate commerce" exemption is outlined in the Department's Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259NRA ("Information Bulletin 28S"), as follows:

IV. INTERSTATE COMMERCE EXEMPTION

A vehicle . . . sold in interstate commerce is not subject to the Indiana sales tax. **To qualify as being "sold**

in interstate commerce," the vehicle . . . must be physically delivered, by the selling dealer to a delivery point outside Indiana. The delivery may be made by the dealer, or the dealer may hire a third-party carrier. ***Terms and the method of delivery must be indicated on the sales invoice. The dealer must document terms of delivery and must keep a copy of such terms of delivery to substantiate the interstate sale.*** The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle or trailer in Indiana, nor is the exemption valid if the buyer, and not the seller, hires a third-party carrier to transport the vehicle or trailer outside Indiana. If the buyer hires the carrier, the carrier is acting as an agent for the buyer; thus, the buyer takes physical possession within Indiana. Possession taken within the state does not qualify as an interstate sale. **(Emphasis in original) (Emphasis added).**

Accordingly, a licensed Indiana car dealer, such as Taxpayer in this instance, generally is required to either collect sales tax or an exemption certificate at the time of the vehicle sale. To qualify for the interstate commerce exemption, the dealer (i.e., Taxpayer) must document the terms and the method of delivery on the sales invoice and maintain copies of delivery documents to substantiate that the vehicles were sold in interstate commerce. Otherwise, the dealer will be personally responsible for the Indiana sales tax.

To support its protest and rehearing request, Taxpayer submitted additional documents, which include copies of check payments, to demonstrate that either a third party transportation company or individuals, on Taxpayer's behalf, delivered the vehicles at issue to the out-of-state customers. After reviewing those documents, the Department agrees that Taxpayer's supporting documentation substantiated that Taxpayer was not responsible for the sales tax on the "Zierner Transaction" because it physically delivered the vehicles at issue to its out-of-state customer. Therefore, the "Zierner Transaction" qualified for the "interstate commerce" exemption.

However, the Department is not able to agree that Taxpayer's supporting documentation substantiated that the remaining vehicle sales qualified for the "interstate commerce" exemption. In the absence of other verifiable supporting documentation to demonstrate otherwise, the audit properly assessed Taxpayer additional tax because Taxpayer is responsible for the sales tax under IC § 6-2.5-9-3. The Department's Enforcement Division is requested to recalculate the assessment in a supplemental audit review.

FINDING

Taxpayer's protest is sustained in part and respectfully denied in part. The Department's Enforcement Division is requested to conduct a supplemental audit review to make the necessary adjustments and recalculate Taxpayer's tax liability. This determination is not final until the supplemental audit review is concluded and its companion supplemental report is issued.

May 2, 2018

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